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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/410,999	10/01/1999	CHRISTOPHER COSGROVE CREAGAN	13098	7748
23556	7590	11/07/2003	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				CHEVALIER, ALICIA ANN
		ART UNIT		PAPER NUMBER 23
				1772

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/410,999	CREAGAN ET AL.	
	Examiner	Art Unit	
	Alicia Chevalier	1772	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 11 August 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 21-44 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 23,26-28,30,34,35 and 37 is/are allowed.

6) Claim(s) 21,22,24,25,29,31-33,36 and 38-44 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

## **RESPONSE TO AMENDMENT**

### ***REJECTIONS REPEATED***

1. The 35 U.S.C. §103 rejection of claims 21, 22, 24, 25, 31-33, 36, and 38-44 over Chappell et al. (H1511) in view of Dodge, II et al. (5,879,343) is repeated for reasons previously of record in paper 21, pages 2-5 paragraph #3.

Chappell disclose an absorbent article such as sanitary napkins (feminine hygiene product), diapers, adult incontinence products, catamenials and bandages (col. 1, lines 15-24). The absorbent article (personal care product) comprises a top sheet, a flow regulator (surge layer), an absorbent core and backsheet (figure 2). The flow regulator comprises a pleated secondary topsheet 27 (1<sup>st</sup> layer) and a web of fibers filling (2<sup>nd</sup> layer) the pleats (col. 4, lines 48-57). The secondary topsheet is a tissue (nonwoven) having a basis weight of from about 0.025 g/in<sup>2</sup> to about 0.045 g/in<sup>2</sup> (39-70 gsm) and a density of from about 0.06 to 0.11 g/cm<sup>3</sup> (col. 8, lines 33-37). The web of fibers can be prepared from any convenient polymer such as polyethylene, polypropylene, polyesters etc. (col. 9, lines 45-50). The absorbent core may comprise pulp and other superabsorbent polymeric materials (col. 6, lines 20-67).

Chappell discloses all the limitations of the instant invention except for the density and basis weight of the web of fibers.

Dodge discloses a surge material used in personal care products such as disposable diapers, incontinence guards, or sanitary napkins with improved rapid intake of liquid and liquid control (col. 1, lines 5-13). The surge material comprising a web of fibers having a density between 0.02 g/cc to about 0.07 g/cc and a basis weight between 200 and 700 gsm (col. 11, lines

57-62 and col. 14, lines 13-30). The web comprises spunbond web of polyolefin filaments, such nonwoven fabric layers may include conjugate, biconstituent and homopolymer fibers or other lengths and mixtures of such fibers with other types of fibers (col. 13, lines 33-40). The surge material can be made more wettable by the addition of a surfactant (col. 14, lines 21-23).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use the surge material of Dodge as the web of fibers in Chappell because of the improved rapid liquid intake and liquid control gained by Dodge's material.

Chappell discloses all the limitations of the instant claimed invention except the creased layer comprises creases with a depth between 0.25 mm and 2 mm and a frequency between 5 and 100 creases per centimeter. The depth and frequency of creases per centimeter is deemed to be a cause effective variable with regard to liquid handling capability. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a cause effective variable such as depth and frequency of creases through routine experimentation in the absence of a showing of criticality in the claimed combined thickness. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill would be motivated to optimize the depth and frequency of the creases in order to increase the amount of liquid capable of being handle by the layer.

The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459

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F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation the first and second layers are bonded together by a method selected from the group consisting of adhesive, mechanical, entanglement, thermal and ultrasonic means is a method of production and therefore does not determine the patentability of the product itself.

As stated in the previous office action, the limitation “compression resistant” is only considered as part of the creasing of the first layer, i.e. if the layer is crease it will have the required compression resistance of the claims.

2. The 35 U.S.C. §103 rejection of claim 21 over Chappell et al. (H1511) in view of Dodge, II et al. (5,879,343) and further in view of Proxmire et al. (5,192,606) is repeated for reasons previously of record in paper 21, page 5 paragraph #4.

Chappell and Dodge disclose all the limitations of the instant invention except for the pleated secondary topsheet comprising apertures.

Proxmire discloses an absorbent personal care article comprising a body side liner, an intermediate transfer layer and an absorbent core (figure 1b). The intermediate transfer layer under the body side liner comprising an apertured film to permit liquid to readily pass through its

thickness to help isolate the wearer's skin from liquids held in absorbent structure (col. 7, lines 28-41).

It also would have been obvious to one of ordinary skill in the art at the time the invention was made to add apertures to the pleated secondary topsheet of Chappell as taught by Proxmire because the apertures would increase ability of Chappell's secondary topsheet to pass liquid through to the absorbent layer.

***Allowable Subject Matter***

3. Claims 23, 26-28, 30, 34, 35 and 37 allowed.

***ANSWERS TO APPLICANT'S ARGUMENTS***

4. Applicant's arguments filed in paper #22 regarding the 35 U.S.C. §103 rejection over Chappell et al. (H1511) in view of Dodge, II et al. (5,879,343) have been carefully considered but are deemed unpersuasive.

Applicant argues that the secondary topsheet of Chappell is not compression resistant or nonwoven. As stated in the previous office actions, the limitation "compression resistant" is only considered as part of the creasing of the first layer, i.e. if the layer is creased it will have the required compression resistance of the claims. Also, tissue is a nonwoven material as shown by Roberts et al. US 3875942.

Applicant further argues that there is no information in Chappell with respect to the depth of the pleats or the frequency of the pleats. Chappell discloses that the secondary topsheet is gathered such that it provides a plurality of pleats that extend substantially parallel to the

longitudinal direction of the sanitary napkin. The secondary topsheet helps to distribute and move fluid that has been deposited upon the topsheet. The secondary topsheet may thus comprise a layer of material capable of being formed into pleats and having interfiber capillaries such that fluid is transferred from the topsheet through to the core (col. 8, lines 20-32). In this passage Chappell is specifically stating the pleated secondary topsheet helps liquid handling capability of the sanitary napkin. Therefore, the pleats are part of the liquid handling capability and are deemed to be a cause effective variable.

5. Applicant's arguments filed in paper #22 regarding the 35 U.S.C. §103 rejection over Chappell et al. (H1511) in view of Dodge, II et al. (5,879,343) and further in view of Proxmire et al. (5,192,606) have been carefully considered but are deemed unpersuasive.

Applicant argues that Proxmire does not cure the deficiencies of rejection over Chappell in view of Dodge. The deficiencies of which Applicant refers have already been addressed above.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

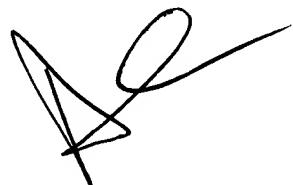
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Harold Pyon can be reached by dialing (703) 308-4251. The fax phone number for the organization official non-final papers is (703) 872-9306. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac

10/16/03



  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  


  
10/18/03